

9 October 1968

MEMORANDUM FOR: Deputy to the Director for National
Intelligence Programs Evaluation

SUBJECT: Agency and Community Organizational
Survey

1. You have requested our comments on the statutory authorities and general legal background of the Agency. I have reviewed the legislative history of all statutes pertaining to the Agency and the various points which were debated in arriving at the present statutory language.
2. The basic charter of the Agency is contained in section 102 of the National Security Act of 1947, as amended. This charter has proved to be excellent for the purpose for which it was designed. It sets up the outlines of a central intelligence structure, but permits great flexibility in how it can be organized or reorganized as needed. It assigned specific functions, but again provides wide flexibility as to how they should be carried out. It also provides wide, general functional authorities, and the machinery of the National Security Council directives puts them into effect.
3. In the early days of the Agency there was concern that the statute did not provide adequate authority to the Director in his capacity as over-all coordinator of U. S. intelligence. Various devices were considered, particularly the idea of having him constituted as the executive agent of the National Security Council for all intelligence activities. Any such command authority, however, involves a complex and eventually insoluble problem of command channels, and I think the concept was properly abandoned. The fact that he is termed in the act as the Director of Central Intelligence as well as the head of the Agency connotes congressional intent as to his role, and the specific duty placed on the Agency to advise and make recommendations to

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the National Security Council assured that he would be the chief intelligence officer of the Government. Based on these concepts, he has achieved the position of pre-eminence in the intelligence community which enables him to carry out his proper function.

4. Placing the Agency under the National Security Council also resolved another debate between those who wished to have the Director report to the President and those who wished to have him report to an interagency group. Since the National Security Council is advisory to the President, the Director has a clear-cut responsibility to the President and yet the members of the Council can play their proper roles as the President may decide.

5. The act permits not only complete freedom in the internal organization of the Agency, but also great leeway in the general organization of the intelligence community. Thus, we have the history of the development of the old Interdepartmental Coordinating and Planning Staff, the Intelligence Advisory Committee and the United States Communications Intelligence Board, to the present United States Intelligence Board and its subcommittee structure. It also permits special arrangements for such functions as communications intelligence ~~for the purpose of~~ and the recently created National Intelligence Resources Board. E, K

(On the covert operations side of the Agency, the act permitted broad National Security Council directives and their implementation through such organizations as the Operations Coordinating Board, the Psychological Strategy Board, and subsequent developments up to the present 303 Committee. Thus, while the Agency has a specific mandate to carry out its estimative function in section 102(d)(3) of the act, it can be expanded or contracted in accordance with what is determined necessary in the light of the international situation.)

6. There is one administrative provision in section 102(c) which authorizes the Director to terminate employees when he deems it necessary or advisable in the interests of the United States. This has been an invaluable personnel tool and essential to protection of Agency security.

7. The one significant amendment to this charter was the one in 1953 which provided for the appointment of a Deputy Director of Central Intelligence. This not only gave the Deputy standing in the intelligence community, but enabled the Director to delegate to him many of his legal authorities in connection with running the Agency.

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8. An obvious shortcoming of the act is that the Director has no authority to carry out the responsibility in a third proviso in section 102(d)(3) for protecting intelligence sources and methods from unauthorized disclosure. This is a most complex problem which has been under close study for many years, and no satisfactory solution has been forthcoming.

9. Administrative authorities of the Agency are contained in the Central Intelligence Agency Act of 1949, as amended. This has provided us with all the authorities and exemptions needed to carry out the wide variety of functions assigned to the Agency during the past 20 years. It enables us to have an effective and flexible personnel program, ranging from the normal desk officer in headquarters to persons in a relationship so remote that they do not know they are working for the Agency. It enables us to exercise all the techniques required for clandestine activities, from traditional agent operations through proprietary and other more sophisticated types of machinery. It has enabled us to undertake major unforeseen projects, such as the U-2 operation.

10. Two provisions of the act are particularly important. The unique authority in section 5 to transfer to and receive from other Government agencies such sums as may be approved by the Bureau of the Budget. This has given us great flexibility and security in our funding. The other is section 3 with its wide authority for utilization of sums made available to the Agency, and particularly subsection (b) thereof which allows us to make any expenditures required for confidential, extraordinary, or emergency purposes, and these expenditures will be accounted for solely on the certificate of the Director. This has been essential to the flexibility and security of our covert activities.

11. Another important provision has been the authority in section 7 to bring aliens into the United States with the concurrence of the Attorney General and the Commissioner of Immigration when it is in the interest of national security or essential to the furtherance of the national intelligence mission. This provided for the solution of problems involving defectors and other aliens of intelligence interest which were otherwise well-nigh insoluble.

12. The most important new legislation is the CIA Retirement Act of 1964. It set up an early retirement system for a portion of the Agency's employees, mainly those with extensive overseas

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service. This is a most useful personnel management tool, which will probably require continuing amendments as Government policy on retirement benefits changes. As an instance, a bill just passed which equated the cost-of-living formula for retirees under this act to other retirement systems which had forged ahead in this type of benefit. There have been a number of other enactments of one sort or another which have had effect on the Agency, but by and large we have been able to maintain the basic authorities set forth above and thereby preserve the freedom of action necessary to carry on the many functions of the Agency. My conclusion, therefore, is that for the foreseeable future we do not need to seek any substantive legislation but must be most careful to preserve the basic authorities on which the Agency now depends.

13. I believe I should add my personal opinion, which is shared by others, that despite the successful passage of the cost-of-living bill noted above, any attempt to make any major change in the substantive legislation might well stir up a reaction in the Congress which could result in legislation limiting the Agency's powers or the flexibility now available to the executive branch in the intelligence community.

s/

LAWRENCE R. HOUSTON
General Counsel

cc:

~~Legislative Counsel~~ E

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